

APPEAL NO. 170716  
FILED MAY 24, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on August 2, 2016, in (city), Texas, with (hearing officer) presiding as hearing officer. Hearing Officer (hearing officer 1) resigned her position with the Texas Department of Insurance, Division of Workers' Compensation (Division) prior to writing a decision and order and the case was reassigned to (hearing officer). Hearing Officer (hearing officer 2) resolved the disputed issues by deciding that: (1) the appellant (claimant) did not sustain a compensable injury on (date of injury); (2) the claimed injury did not arise out of an act of a third person intended to injure the claimant because of personal reasons and was directed at the claimant as an employee and because of the employment, and the respondent (carrier) is not relieved of liability for compensation; and (3) the claimant did not have disability resulting from the claimed injury.

The claimant appealed the hearing officer's decision. In his appeal the claimant requested an immediate dismissal of the hearing officer's decision and contended that the hearing officer's statement that the parties were informed of the change in hearing officer and waived another hearing is inaccurate. The carrier responded, urging affirmance of the hearing officer's decision.

DECISION

Affirmed.

The claimant testified at the CCH held on August 2, 2016, that he was injured when he was attacked by his supervisor after a heated argument.

Division records show that prior to her resignation Hearing Officer 1 notified the parties that she did not have sufficient evidence from the August 2, 2016, CCH to determine the issue of disability. The claimant initially indicated a willingness to withdraw the issue of disability so it could be addressed separately at a later CCH; however, the claimant changed his mind and notified Hearing Officer 1 that he was unwilling to withdraw the disability issue. Hearing Officer 1 reopened the record and ordered a designated doctor examination to address disability and notified the parties that upon receipt of the designated doctor's report and responses from the parties regarding that report she would issue a decision. However, Hearing Officer 1 resigned her position as hearing officer prior to the receipt of the designated doctor's report, and the case was reassigned to Hearing Officer 2. The appeal records show the record was still open when the case was reassigned to Hearing Officer 2.

Hearing Officer 2 noted in her decision the following:

Hearing Officer 1 was no longer available to complete the decision, and the matter was reassigned to Hearing Officer 2. The parties were informed of the change and waived another hearing.

The claimant contends on appeal that the hearing officer's statement is untrue, and requests an "Emergency CCH."

Division records reflect that Hearing Officer 2 sent an email to both parties that stated the following:

Parties on (claimant) matter:

You may be aware, by now, that hearing officer 1 is no longer with the Division. Therefore, I will be writing the decision and order on the above matter.

Recall that the [c]laimant, attended a designated doctor examination on [October 27, 2016] on the issue of [d]isability. I received [(Dr. J)] report and I have marked the report as Hearing Officer Exhibit 4 for identification purposes. It is attached to this email for your review. Do take some time to go through the report. Please inform me within the next 10 days if you have a legal (emphasis original) objection to the admission of [Hearing Officer] Exhibit 4. If you have an objection, please state clearly the legal basis of your objection, so that I can make a proper ruling. You are also free to make a comment or observation regarding the report. The record will close on March 6, 2017, at which time the Decision and Order will be written. Thank you for your prompt attention to this matter.

The claimant responded to the hearing officer in an email dated February 25, 2017, stating in part that "I request that you rule quickly. . . ."

Although Division records show there was discussion between the parties that the claimant was considering to withdraw the issue of disability to be addressed in a later proceeding, Division records also show that the claimant ultimately declined to withdraw the issue of disability for a later proceeding. The record was still open when the case was reassigned to Hearing Officer 2 and the parties were allowed to submit additional arguments regarding the designated doctor's report on disability. Based on a review of the record on appeal there is no evidence the claimant was promised a second CCH in this case. As noted above, the claimant requested Hearing Officer 2 to

“quickly” resolve the issues and make a decision. We perceive no error on the hearing officer’s part in issuing her decision without holding a second CCH.

The hearing officer’s determination that the claimant did not sustain a compensable injury on (date of injury), is supported by sufficient evidence and is affirmed.

The hearing officer’s determination that the claimed injury did not arise out of an act of a third person intended to injure the claimant because of personal reasons and was directed at the claimant as an employee and because of the employment, and does not relieve the carrier of liability for compensation is supported by sufficient evidence and is affirmed.

The hearing officer’s determination that the claimant did not have disability resulting from the claimed injury is supported by sufficient evidence and is affirmed.

### **SUMMARY**

We affirm the hearing officer’s determination that the claimant did not sustain a compensable injury on (date of injury).

We affirm the hearing officer’s determination that the claimed injury did not arise out of an act of a third person intended to injure the claimant because of personal reasons and was directed at the claimant as an employee and because of the employment, and does not relieve the carrier of liability for compensation.

We affirm the hearing officer’s determination that the claimant did not have disability resulting from the claimed injury.

The true corporate name of the insurance carrier is **VALLEY FORGE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
1999 BRYAN STREET, SUITE 900  
DALLAS, TEXAS 75201-3136.**

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Carisa Space-Beam  
Appeals Judge

CONCUR:

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K. Eugene Kraft  
Appeals Judge

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Margaret L. Turner  
Appeals Judge